prospective husband. Her marriage to the applicant is, therefore, in her own interest.

(4) If they get married now, the complainant would avoid undue publicity; and there is a possibility, depending on the direction of the Public Prosecutor, that the rape charge against the applicant would be withdrawn.

What constitute exceptional and special reasons must necessarily depend on the facts of each case. One of the main considerations in granting bail is whether the accused, if released on bail, is likely to tamper with the prosecution evidence or to get up false evidence in support of his defence. In the present case, I find that the very object of the present application for bail is not so much for the purpose of the proposed marriage but rather to get the rape charge against the applicant withdrawn. The proposed marriage, therefore, is a means to an end. To put it bluntly, the object is to frustrate or embarrass the criminal proceedings which are being taken against the applicant. In cases of this type, where the applicant is charged for rape against a girl of tender years, the fact that the applicant wanted to marry the girl with a view to get the charge withdrawn is, to my mind, insufficient to constitute exceptional and very special reasons for the purpose of granting bail under section 389 of the Criminal Procedure Code.

Under the circumstances of the present case, I am of the opinion that the grounds put forward by learned counsel for the applicant fall short of being exceptional and very special reasons; and I would, therefore, dismiss the application.

Application dismissed.

Solicitors: *Mahalingam & Co.*

SUPERINTENDENT OF LANDS AND SURVEYS, THIRD DIVISION v. WAH TAT BANK LTD. & ANOR.

[F.C. (Azmi L.P., Ismail Khan C.J. (Borneo) & Yong J.) March 3, 1971]

[Kuching — Federal Court Civil Appeal No. 90 of 1970]

Land Laws — Land acquisition — Procedure of court — Principles to be applied — Sarawak Land Code (Cap. 81).

The Government of Sarawak had resumed certain lands for the development of Sibu port and the Superintendent of Lands and Surveys had made an award of $111,000 for one lot and $267,000 for the other lot. The respondents asked for a reference to the court and at the hearing the learned judge increased the awards to $114,000 and $274,000 respectively.

Held, allowing the appeal: as the learned judge had held that the respondents had failed to prove that the superintendent's award was inadequate, the award of the superintendent should have been confirmed.

Cases referred to:-

(1) *Superintendent of Lands and Surveys, Sarawak* v. *Aik Hoe & Co. Ltd.* [1966] 1 M.L.J. 243 at p. 245.

(2) *Assistant Development Officer, Trombay* v. *Tayaballi Allibhoy Bohori* 1933 A.I.R. Bom. 361.

FEDERAL COURT.

Jemuri bin Serjan for the appellant.

S. Sahathevan for the respondents.

Cur. Adv. Vult.

Ismail Khan C.J. (Borneo): The Government of Sarawak resumed under the Sarawak Land Code (Cap. 81) for the development of Sibu Port, Sarawak, two parcels of land *viz:-*

(1) That parcel of land held under Occupation Ticket No. 27830 situate in Channel Road in area 1529 square feet (hereinafter called Lot 27830), the property of Wah Tat Bank (hereinafter called the first respondent).

(2) That parcel of land held under Occupation Ticket No. 21842 situate in Channel Road in area 3866 square feet, the property of one Teo Sien Ching as trustee (hereinafter called the second respondent).

The Superintendent of Lands and Surveys (hereinafter called the superintendent) made an award of $111,000 for Lot 27830 and $267,100 for Lot 21842. The first and second respondents each asked for a reference to the High Court at Sibu. The two references Nos. 9 and 10 of 1969 were consolidated, and at the hearing thereof the learned judge increased the award for Lot 27830 to $114,000 and the award for Lot 21842 to $274,000. This appeal is against the decision of the learned judge in making the increased award for each of the two lots.

Lot 27830 is flat land and rectangular in shape. It lies 35 feet away from the bank of the Rejang River. It is held under an open land title. There is a small building on the land used as a grocery shop. Lot 21842 is also flat land roughly triangular in shape 35 feet away from the Rejang River. The condition on the title of this lot restricts its user only as a godown site. There is a small store on this land.

At the enquiry held by the superintendent, the first respondent claimed a sum of $764,500 for his Lot and the second respondent a sum of $1,933,000 for his. Both the respondents relied on the sales of two lots, *viz.* Lot 1465 and Lot 1466 Sibu Town in support of their respective claims. The evidence relating to such sales was rejected. The superintendent awarded a sum of $111,000 for Lot 27830 and a sum of $267,000 for Lot 21842.

The question for decision is this court is the market value of each of the two lots as on the 9th day of August 1968, being the material date, and if the learned judge's award represented such market value.

At the hearing of the consolidated reference, counsel for the first respondent reduced his claim from $764,500 to $183,000, *i.e.* $120 per square foot. The second respondent also reduced his claim from $1,933,000 to $386,000, *i.e.* $100 per square foot.

Mr. Chew Kim Poom, assistant manager of the respondent bank relied upon the sales of Lots 1465

and 1466, in support of his claim for $100 per square foot. Each of the two lots has an area of 400 square feet, and is about 360 feet away from Lot 27830. Lot 1465 was sold to Esso at a public auction for $512 per square foot on the 14th of November, 1966. Lot 1466 was purchased by Shell for $135 per square foot on the 15th of May, 1965. Evidence of sales of shoplots in the neighbourhood were also adduced to show a rising trend in the prices of land. The sales are of Lot 3478 to Lot 3483 (Sibu) with prices ranging from $81.07 to $111.60 per square foot. The transactions took place 10 months after the relevant date. It was claimed for Lot 27830 that the open title under which it is held would ensure a better price in the open market than the price for the shoplots. The second respondent relied upon the sales of the above two lots, *viz.* 1465 and 1466, and on the sales of three lots in the vicinity *viz.* Lots 1363, 1364 and 1371 (Sibu). These three lots are held under a restrictive title. They are sites for godowns.

The superintendent argued that Lots 1465 and 1466 could not furnish any basis for comparison with the acquired parcels of land. He said Lots 1465 and 1466 were sold to Esso and Shell for the specific purpose of their user as stations for the supply of fuel to the boats by means of flexible pipes. To operate such stations it would be necessary to have underground storage for fuel. This would not be possible in the case of these two lots unless easements were acquired over other property. Lot 1465 has an easement over Lot 1629 with an area of 1,550 square feet and Lot 1466 has one over Lot 1638 with an area of 1,416 square feet. It was a condition of the sale of the two lots that these easements were to be issued free from all charges. In the result the sale of Lot 1465 with the benefit of the easement would secure a price of only $108/- per square foot and the price of Lot 1466 with the easement would cost only $28/- per square foot.

Mr. Richard Jee, witness for the superintendent, rejected the two Lots 1465 and 1466 as comparables. He agreed with the superintendent's valuation of the acquired lands and suggested the sales set out in Exhibit K.1 as data for comparison. He said 13 of these lots are comparable with Lot 27830.*

He also referred to sales of three lots in K.1 in support of the superintendent's valuation of Lot 21842.†

The learned judge set out at some length in his judgment the evidence for the respondents and for the superintendent. Then follows a statement of the principles governing the determination of the market value.

He held there were two issues before the court *viz:*—

(1) Whether lots acquired are comparable with the two lots, *i.e.* Lots 1465 and 1466;

(2) Whether sales which took place 10 months after the relevant date should be considered or not.

It is not altogether clear from the judgment if the learned judge had rejected the two lots for the purpose of comparison. Only this passage occurs in the judgment: —

"A detailed analysis of the evidence shows that Lot 1465 was in effect sold for $108 per sq. ft. and not $512.50 as shown in Sale No. C1 (Exhibit J2).

Similarly, Lot 1466 was in effect sold for $28 per sq. ft. and not $135 as shown in Sale No. C2 (Exhibit J2)."

I can only assume by implication that he had rejected these two lots.

The learned judge then proceeded to observe: —

"In the view we take of the first issue, it is not, in the circumstances, necessary to consider the second point, the second point being whether sales which took place 10 months after the relevant date should be considered."

With due respect, it does not follow that because of the rejection of Lots 1465 and 1466 as comparables it would be unnecessary to consider the sales of lots sold 10 months after the material date. These are

* These are:

Sale No.	Title No.	Area in sq. ft.	Condition of Title.	Date of Sales	Price p.s.f. excl. improv.	Zoning
1.	L.42867	1,817	Shophouse	21. 3.68	$70.40	Commercial
2.	L.42866	2,291	- do -	20. 3.68	$71.28	- do -
3.	L.43515	2,106	- do -	4. 6.68	$49.47	- do -
4.	L.42884	1,966	- do -	3.12.68	$32.48	- do -
5.	L.42889	1,654	- do -	1. 7.68	$43.22	- do -
6.	L.41680	1,800	- do -	6. 4.68	$36.81	- do -
8.	L.43574	1,799	- do -	2. 1.69	$57.80	- do -
9.	L.42836	1,825	- do -	2. 3.68	$38.83	- do -
10.	L.42834	2,254	- do -	2. 3.68	$34.98	- do -
11.	L.42847	2,002	- do -	5. 3.68	$28.89	- do -
12.	O.T.32967	2,013	- do -	(2. 8.68	$28.01	- do -
				(2. 8.68	$28.01	- do -
13.	L.42807	2,016	- do -	16. 8.68	$ 7.93	- do -
14.	L.43507	2,008	- do -	10.10.68	$49.96	- do -

† They are:

15.	Lot 1363 Sibu T.D.	2.000	Godown	5. 1.68	$62.50	Godown
16.	Lot 1364 Sibu T.D.	2,000	- do -	11.12.68	$60.50	- do -
17.	Lot 1371 Sibu T.D.	1,990	- do -	23. 4.68	$18.20	- do -

Lots 3478 to 3483 (Sibu). They are not in the same category as the two Lots (1465 and 1466). They are shoplots and evidence of their sales should be considered in relation to Lot 27830 for whatever it was worth before it was rejected. It must be remembered that Lot 27830 is held under an open title.

I pause to observe that in this portion of the learned judge's judgment he used the words "In the view we take.....". It is a view taken after consultation with the assessors. I think the correct procedure to be followed in such cases is laid down by Suffian J. (as he then was) in the case of *Superintendent of Lands and Surveys, Sarawak* v. *Aik Hoe & Co. Ltd.*[1] That is the procedure followed in the High Court of Malaya. In the above case Suffian J. (as he then was) said: —

"... after closing submissions, the judge does not usually sum up to the assessors in open court, but adjourns the case to enable him to look up the law, to discuss leisurely with the assessors the evidence and the appropriate award to be made. After discussion he puts up a draft written award for the consideration of the assessors. When it and the appropriate award and reasons have been discussed or agreed, he and the assessors return to open court (this may be weeks later), the assessors announce their opinion in open court, the judge records it and reads out his award, agreeing or disagreeing with the assessors' opinion. If the assessors agree with the judge's written award, they sign it.

I have scrutinised the Sarawak Land Code and I find nothing in it making it obligatory for the judge to sum up in every case. I think he has a discretion to sum up or not. In a short and straightforward case he might find it convenient to do so. But in a complex case lasting several days he might regard it as unfair to the assessors to sum up in open court and the three of them might prefer to have the opportunity of a leisurely examination of the land, the evidence and the law and an unhurried consultation as to the proper award to be made..."

Towards the end of his judgment the learned judge said: —

"Quite clearly it is for the applicant to prove that the award was inadequate and our view in this case is that the applicant has not discharged the burden imposed on him."

"The Government valuer has to ascertain the value to the owners as best he can and we think it quite fair for him to do what he has done in the present case."

Immediately following this passage appears this finding by the learned judge: —

"However, in the light of all the evidence given and making all due allowances including the rise in land values, in our opinion a fair figure would be worked out as follows: —

O.T. No. 27830 — $75 per sq. ft. making a total of $114,675.
O.T. No. 28142 — $71 per sq. ft. making a total of $274,486."

The learned judge allowed a sum of $2,300 as compensation for the building on Lot 27830. The learned judge's award represents an increase on the award by the Superintendent in respect of each of the acquired lots.

Enche Jemuri bin Serjan for the superintendent contended that the learned judge, having already held that the respondents had failed to prove that the superintendent's award was inadequate, should have confirmed such award. He cited the case of *Assistant Development Officer, Trombay* v. *Tayaballi Allibhoy Bohori*[2] where Broomfield J. said: —

"The party claiming an enhanced compensation is more or less in the position of the plaintiff and must produce evidence to show that the award is inadequate. If he has no evidence the award must stand, and if he succeeds in showing, *prima facie*, that the award is inadequate then the Government must support their award by producing evidence."

I confess I find it difficult to reconcile the finding that the respondents had failed to prove the inadequacy of the superintendent's award with the subsequent decision to increase the award.

No reasons were given for the first finding, and it is not easy to see why it was thought necessary to increase the award.

All that was said was that the increased award was made "in the light of all the evidence, making due allowances, including the rise in land values." In my view that is not enough. Before such expressions are used sufficient groundwork should be laid by examining and evaluating the evidence and pinpointing such evidence and the inferences therefrom that go to support the increased award.

For these reasons, and this appeal being a rehearing, this court is entitled to review the evidence *de novo*.

From the superintendent's evidence I am satisfied that the two lots (1465 and 1466) cannot be regarded as sale comparables because of the easements necessary over two other lots. Lot 27830 cannot be recommended as a petrol station owing to lack of vehicle access. There is also no direct access to the river. Places across the river are preferred in order to reduce fire hazards and to relieve the congestion at Sibu Port. Again, there is a stretch of Government land between Lot 27830 and Lot 21842 with no registered right of way over this piece of Government land.

Mr. Chew for the first respondent could only refer to one sale at the time of the material date where a shoplot (Lot 1675, see Exhibit J.1) was sold for $80.48 per square foot. On the same day two other lots (Lots 1673 and 1674) in the same vicinity were sold for $61.20 and $67.24 respectively, below $70 being the price per square foot awarded by the superintendent for Lot 27830. Lot 1675 cannot, therefore, be regarded as comparable. The same witness referred to six other sales (Lot 3478 to Lot 3483 (Sibu)). These are shoplots sold on the same day (25th of June 1969), about 10 months after the relevant date. In the absence of other sales nearer in point of time to the material date, the sales of these six lots could be considered as they took place, a reasonable interval after the material date. (See *Assistant Development Officer, Trombay* v. *Tayaballi Allibhoy Bohori*[2] at p. 363, *supra*. But there is evidence of sales previous to and a few months after the 9th of August, the relevant date. These appear in the table I have set out earlier on. All these lots are in the vicinity of Lot 27830.

It could be seen from this table that the highest price reached in the year 1968 was $71.28 for Lot 42886 at a sale on 20th March, 1968. The next day,

Lot 42867 was sold for $70.40. From then onwards throughout the year there had been fluctuations in price, the highest being $49.96 in October.

For these reasons I cannot accept the six lots sold 10 months later as comparables. The fluctuations in price shown in the above table must rebut any suggestion of a rising trend in prices at the time. The superintendent has awarded a sum of $111,000 for Lot 27830, that is, $70 per square foot. For reasons I have indicated, this is an adequate award.

I observe that Mr. Jee said that if he had to value the building the highest price would be $2,816. The superintendent made no award for this as Mr. Jee said it was worth nothing. It stands on land held under an open title and used as a grocer's shop. In my opinion, an award should be made in respect of the building. The sum of $2,300 awarded by the learned judge is a fair figure.

As regards Lot 21842, the only evidence of comparable sales would be the sales shown in the second table I have set out. They are all held under a similar title. In the year 1968 the highest price obtained was $62.50 for Lot 1363 on 5th January 1968. In April, Lot 1371 could only fetch $18.20. In December the price was $60.50 for Lot 1364. In the circumstances the superintendent's award of $274,000, that is, $65 per square foot is adequate.

In the result the appeal is allowed. I set aside the award made by the learned judge with this variation that the award of $2,300 for the building on Lot 27830 remains. I restore the award of $111,000 by the superintendent for Lot 27830. I direct that the two said sums be paid to the first respondent, less any sum paid by the superintendent, if any. I restore the award of $267,000 by the collector for Lot 21842, and I direct that this sum be paid to the second respondent if it had not already been paid.

I also direct that interest be paid on the said sum of $2,300 to the first respondent at the rate of 4% per annum in accordance with section 69 of the Land Code.

The order of the learned judge as to costs is set aside.

The appellant will have his costs of this appeal and in the court below.

Azmi L.P. and Yong J. concurred.

Appeal allowed.

MAHON v. MAHON

[O.C.J. (Ong Hock Sim J.) March 3, 1971]

[Penang — Divorce Petition No. 23 of 1970]

Family Law — Divorce — Application by wife — Domicil — Jurisdiction — Whether wife "ordinarily resident" in Malaysia — Divorce Ordinance, 1952, s. 49(1).

In this case the petitioner applied for dissolution of her marriage with the respondent. The parties were domiciled in Ireland but the petitioner claimed that she was ordinarily resident in Malaysia for the last three years immediately preceding the commencement of the proceedings. On the facts although the petitioner had resided in Penang she was absent in Ireland for about 15 months out of the preceding 36 months. The petitioner owned a furnished dwelling in Dublin and had a half share in another house in Dublin. The children of the marriage were living in Ireland and the petitioner said that she intended to return and settle down in Ireland with her children after the conclusion of the proceedings.

Held: in view of the domicil of the parties and the fact that they have no house of their own in this country and their clear intention to return to their country of origin, it could not be said that the petitioner was "ordinarily resident" in the Federation and therefore the petition must be dismissed for lack of jurisdiction.

Cases referred to:-

(1) *Hopkins* v. *Hopkins* [1950] 2 All E.R. 1035.

(2) *Macrae* v. *Macrae* [194] 2 All E.R. 34; [1949] P. 397.

DIVORCE PETITION.

Lim Kean Siew for the petitioner.

S. Thillaimuthu for the respondent.

Ong Hock Sim J.: The petitioner is suing the respondent for a dissolution of her marriage and other incidental or ancilliary reliefs. The fact that a petition for divorce is not defended does not necessarily mean that the relief would automatically be granted. Divorce involves the severance and dissolution of the marriage bond. It involves further a change of status. The court should itself be mindful whether it has jurisdiction to entertain the petition.

The parties were married at the Church of St. Josephs in the Parish of Tramore and Carbally in Ireland on the 4th day of July, 1955. The petition states in paragraph 6 that "the petitioner and the respondent are not domiciled in Malaya" but from the facts set out, I think I could safely infer that their domicil is in Ireland, which has not been changed by any acquisition of a domicil of choice. The petition is filed pursuant to section 49(1)(b) of the Divorce Ordinance (No. 74 of 1952) and I quote:

"49(1) Without prejudice to any jurisdiction exercisable by the court apart from this section, and notwithstanding the provisions of paragraph (b) of sub-section (1) of section 4, the court shall by virtue of this section have jurisdiction to entertain proceedings by a wife in any of the following cases, notwithstanding that the husband is not domiciled in the Federation, that is to say:—

(b) in the case of proceedings for divorce or nullity of marriage and any proceedings consequent thereupon, if the wife is resident in the Federation and has been ordinarily resident there for a period of three years immediately preceding the commencement of the proceedings."

The basis for invoking the jurisdiction of this court therefore is that the petitioner has been ordinarily